

**Assembly Bill 659 (Wiggins) Chapter 601***Welfare Exemption – Low-Income Housing**Historic Wooden Vessels**Indian Tribal Owned Low-Income Housing Projects*

*Tax levy; effective September 24, 2000. Amends Sections 214 and 237 of, and adds Section 230 to, the Revenue and Taxation Code.*

**This bill (1) reinstates eligibility for the welfare exemption to property qualifying on the sole basis that the property provides housing to low-income residents and is wholly owned by non-profits, as specified; (2) exempts a wooden vessel of historical significance meeting specific requirements; and, (3) modifies the exemption for low-income housing owned and operated by the housing entity of a federally designated Indian tribe to permit a partial exemption corresponding to that portion of the property occupied by lower income households.**

*Sponsor: Assembly Member Patricia Wiggins*

**Welfare Exemption - Low-Income Housing***Revenue and Taxation Code Section 214***Claimant Eligibility**

**This measure adds subparagraph (C) of paragraph (1) of subdivision (g) to reinstate eligibility for the welfare exemption on the sole basis of providing low-income housing for property that is wholly owned by an eligible non-profit corporation if 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. This reinstatement applies to organizations claiming the exemption for the January 1, 2000 lien date. Property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation is specifically *excluded* from this reinstatement and to qualify for exemption, such property must either (1) be financed with tax-exempt bonds, or government provided loans or grants or (2) the owner must be eligible for and receive low-income housing income tax credits.**

**Additionally, this measure places an exemption cap of \$20,000 of tax for non-profit organizations who qualify under 214(g)(1)(C). The total exemption amount allowed under Section 214(g) to a taxpayer, with respect to a single property or multiple properties for any fiscal on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars (\$20,000) of tax.**

### **Restricted Use Documentation**

**This bill reinstates the use of an “other legal document” as documentation that the project is restricted to use as low-income housing but only for property that is wholly owned by an eligible non-profit corporation. This bill adds Section 214(g)(1)(C)(ii) to specifically exclude property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation from this reinstatement. Property owned by limited partnerships must either have (1) a recorded deed restriction or (2) an enforceable and verifiable agreement with a public agency limiting its use to low-income housing.**

#### *Law Prior To Amendment:*

Subdivision (g) of Section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing occupied by lower-income households. Qualifying organizations include limited partnerships in which the managing general partner is a qualified nonprofit corporation meeting the requirements of Section 214, as well as religious, hospital, scientific, or charitable funds, foundations or corporations. A partial exemption is available equal to the value of the portion of the property serving lower-income households

For a low-income housing project owned and operated by a qualifying organization to be eligible for the exemption, the project must meet *one* of the following criteria:

1. The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower-income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance; or
2. The owner of the property is eligible for and receives low-income housing tax credits pursuant to section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

### **Claimant Eligibility**

Legislation effective January 1, 2000, through Assembly Bill 1559 (Stats. 1999, Ch. 927), deleted a provision of law which permitted housing to qualify for the welfare exemption also on the basis that twenty percent or more of the occupants of the property are lower-income households. Consequently, for organizations claiming the exemption for the January 1, 2000 lien date, to qualify for the welfare exemption, low-income housing must either (1) be financed with tax-exempt bonds, or government loans or grants or (2) the owner must be eligible for and receive low-income housing income tax credits.

### **Restricted Use Documentation**

In order to be eligible for the exemption provided by subdivision (g) of Section 214, the owner of the property must do both of the following:

1. Certify and ensure that there is documentation, as specified, that restricts the project's usage and that provides that the units designated for use by lower-income households are continuously available to or occupied by lower-income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.
2. Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower-income households.

With respect to the necessary documentation, prior to January 1, 2000, nonprofit organizations that own low-income housing projects qualifying for the welfare exemption were required, in part, to certify and ensure that there is a deed restriction, agreement, or "other legal document" that restricts the project's usage. For organizations claiming the exemption for the January 1, 2000 lien date, these provisions were made more restrictive by Assembly Bill 1559. Specifically, any deed restriction must be recorded, any agreement must be both enforceable and verifiable as well as be entered into with a public agency, and the use of an "other legal document" is no longer permitted to substantiate the restrictions. Some nonprofit organizations' pre-existing documents for these purposes did not meet the higher standards when the law change took place. Thus, unless these low income housing projects can obtain the necessary documentation, they will be ineligible for exemption for the 2000-01 fiscal year (July 1, 2000 – June 30, 2001).

#### *Background:*

The provisions of 1999's Assembly Bill 1559 (Wiggins) were designed to revoke the property tax exemption from properties owned by certain owners of substandard housing and were sponsored by the Los Angeles Housing Project. In the course of investigating various slum-housing projects, the organization was surprised to discover that these properties were receiving a property tax exemption under a provision which permits the property to qualify solely on the basis that the residents are low-income households. The organization also found a loophole permitting these particular properties to receive the exemption without being subject to a recorded deed restriction.

#### *Comments:*

1. **Purpose.** To ensure that projects providing safe and decent housing for low income persons are not unintentionally disqualified from receiving the exemption as a result of the adjustments made by AB 1559 to revoke the exemption from organizations operating substandard housing. This bill reinstates the exemption for certain

properties wholly owned by non-profits that do not receive income tax credits or government financing but who whose housing projects are at least 90% occupied by low income persons subject to a \$20,000 exemption cap.

2. **The exemption cap does not apply to non-profit organizations that receive tax credits or government financing.** Organizations which receive tax credits or have governmental financing would be eligible for a 100% exemption under the provisions of Section 214(g)(1) or 214(g)(2) which does not impose an exemption cap.
3. **For nonprofit organizations that own property in more than one county, as well as organizations that own more than one property in a county, it may be difficult to track the \$20,000 exemption cap.** The cap applies to all property used for rental to low income households owned by a taxpayer. Currently, claims for the welfare exemption reviewed by the Board of Equalization do not provide information on the assessed value of the property. It is not indicated who would be responsible for tracking this information. Moreover, many counties do not have available a current assessed value for these properties since the properties are exempt from property taxation. The assessors' staffs may be required to appraise the properties in order to determine the amount of property taxes owed on properties owned by the nonprofit organizations once the cap is exceeded.
4. **The phrase "\$20,000 of tax" may be problematic to administer.** It may be more cumbersome to determine the proper amount of assessed value to exempt since tax rates vary. Therefore it may be preferable to cap the exemption at \$2,000,000 of assessed value. Please note that the California Supreme Court has held that the welfare exemption does not provide an exemption from special assessments for local improvements, but only from property taxes. The property of nonprofit organizations remain subject to levies of special districts. (*Cedars of Lebanon v. County of Los Angeles* (1952) 35 Cal.2d 729, 747)
5. **The statute does not state how it will be determined which properties of a nonprofit owning multiple properties will get the exemption.**

**Historic Wooden Vessels**  
*Revenue and Taxation Code Section 230*

**This bill exempts from property taxation a refurbished original, wooden inland waters vessel of 47 feet or larger, built in California during or prior to 1910, that has continuously thereafter remained in California waters, and has been designated a California State Historical Landmark and that is part of a maritime museum. This bill also exempts any personal property on the vessel that is used in its operation.**

**Specifically, this bill exempts a particular historical vessel, the Madaket, which is owned by the Humboldt Bay Maritime Museum and located in Eureka, California.**

*Law Prior To Amendment:*

Article XIII, Section 2 of the California Constitution provides that the Legislature may, two-thirds of the membership of each house concurring, classify any personal property for differential taxation or for exemption. Personal property may be exempt by reason of its ownership, use, and/or type.

*Background:*

The Humboldt Bay Maritime Museum, Inc. is a non-profit organization dedicated to preserving, protecting, promoting and sharing Northern California maritime history, primarily in the Humboldt Bay region. In addition to operating a museum, it also owns a vessel, the Madaket, a former ferry built in 1910. The Madaket was first used to ferry workmen to Woodley and Samoa Islands where lumber and pulp mills were located. Once bridges were constructed to these Islands, the Madaket was turned over to the City of Eureka as a tourist attraction and eventually acquired by the Museum. The Madaket is the oldest commercial passenger craft in the United States. It is currently used to take visitors on 75 minute narrated historical tours of the Humboldt Bay harbor. The cruises operate daily from May to October.

The Humboldt Bay Maritime Museum applied for a property tax exemption via the welfare exemption on the Madaket. However, the historical vessel was ineligible for the welfare exemption because of 1) the lack of an "irrevocable dedication" clause in their organization's articles of incorporation and 2) the use of the vessel as a "commercial venture" (e.g. fees for taking visitors on bay excursions). The income from these operations represent approximately 20% of the vessel's income and is used for the maintenance of the vessel and other expenses. While the Museum indicated that they could remedy the first issue (irrevocable dedication clause), they could not cease the "commercial" use of the vessel and keep the museum (vessel) solvent.

*Comments:*

1. **Purpose.** To obtain a property tax exemption for the Madaket as personal property, since it can not technically qualify for exemption under the welfare exemption.
2. **Unlike real property, which requires constitutional amendment for exemption, any personal property may be statutorily exempted by a 2/3 vote of the Legislature.** Existing law provides a variety of exemptions or preferential assessments for various types of vessels. (Sections 209, 209.5, 228, 227, 1) In addition, Section 220 exempts aircraft of historical significance, as specified, from taxation and Section 217.1 exempts aircraft in an aerospace museum, as specified.
3. **Annual Claim Form Required.** To qualify for the exemption the Museum would be required to file a claim each year by February 15.

**Indian Tribal Owned Low-Income Housing Projects**

*Revenue and Taxation Code Section 237*

**This bill requires that at least 30%, rather than 100%, of the units in Indian Tribe low-income housing projects be continuously available for lower income households to be eligible for exemption under Section 237.**

*Law Prior To Amendment:*

Last year, SB 2231 (SR&T) added Section 237 to the Revenue and Taxation Code to provide a 100% exemption for Indian Tribe low-income housing projects that was analogous to the welfare exemption available for low-income housing. However, unlike the welfare exemption which permits a partial exemption depending on the percentage of low income tenants, the tribal projects must be 100% occupied by lower income households.

*In General:*

Any property, real or personal, which is held in trust by the United States for an Indian Tribe or its members is immune from property taxation. Generally, California imposes property taxes on Indian-related property in three instances: (1) Indian tribal owned lands that are located outside the Indian reservation, (2) land owned by Indian tribal members that is located within the Indian reservation if it is owned in fee and (3) Indian lands that are used by non-Indians (possessory interests).

The welfare exemption applies to property owned and operated by qualifying organizations and used exclusively for rental housing for lower-income households. Qualifying organizations include limited partnerships in which the managing general partner is a qualified nonprofit corporation meeting the requirements of Section 214, as well as religious, hospital, scientific, or charitable funds, foundations or corporations.

To qualify for the exemption, various organizational requirements must be met in addition to demonstrating the charitable uses of the property in question.

Prior to the enactment of Section 237, certain Indian Housing Authorities have been denied the welfare exemption on property located off-reservation and not otherwise immune from taxation. There were two organizational requirements which Indian Tribes and tribally established housing authorities could not satisfy to be eligible for the welfare exemption. Revenue and Taxation Code Section 214.01 requires that the applicant's Articles of Incorporation, its Bylaws, Articles of Association, Constitution, or Regulations contain a statement that the organization's property is irrevocable dedicated to religious, charitable, scientific, or hospital purposes. In addition, Section 214.8 requires that the welfare exemption not be granted to any organization unless that organization is qualified as an exempt organization under 23701(d) or Internal Revenue Code Section 501(c)(3). These conditions could not be met because tribally designated housing entities must be created under tribal law to receive block grants for low income housing under the United States Department of Housing and Urban Development.

*Background:*

Federal funds for financing low-income housing projects are available under a 1996 Congressional Act, the Native American Housing Assistance and Self-Determination Act. One condition of receiving these funds is that the tribe have a cooperation agreement with local governments exempting the housing project from taxation. Consequently without a property tax exemption, the tribes could not receive funds under this particular program.

*Comments:*

1. **Purpose.** To ensure that low-income housing projects owned by federally recognized Indian tribes will not be disqualified from receiving the exemption if some units are rented to households whose income exceeds the low income threshold level.
2. **These provisions permit the newly created exemption for tribal owned housing to receive a partial exemption in conformance with the partial exemption provided to low-income housing properties that qualify under the welfare exemption.** With respect to the welfare exemption, Revenue and Taxation Code Section 214(g)(1) provides that a low-income housing project "shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year".